

STATE OF NEW MEXICO'S RULE 71.3 REPORT – FY 2024
EXHIBIT A: LOWER RIO GRANDE ADJUDICATION BUREAU

June 26, 2023

Pursuant to the requirements of NMRA Rule 1-071.3, the State of New Mexico presents its report setting out the State's priorities and available resources for the state stream system adjudication, in the Lower Rio Grande Adjudication Bureau for fiscal year 2024 (July 1, 2023 to June 30, 2024), which will be filed in each adjudication. The available resources are based upon full time employee ("FTE") time, including staff and contractors, and are listed in Table 1.

SUMMARY OF AVAILABLE RESOURCES FOR THE LOWER RIO GRANDE ADJUDICATION BUREAU

	FY2021 FTEs	FY2022 FTEs	FY2023 FTE	FY2024 FTE
Total Bureau Staff and Contractor Resources	12.9	11.7	9.5	10.6
A. Lower Rio Grande Adjudication	12.512. 47	11.1	9.0	10.0
B. Animas Underground Water Basin Adjudication	0.4	0.6	0.5	0.6

LOWER RIO GRANDE ADJUDICATION PRIORITIES FOR FY 2024

A. General

1. Litigation of proposed or designated stream system/expedited *inter se* issues
 - a. Steam System Issue 104 (United States' interest in the Rio Grande Project). This stream system issue continues to be stayed during consideration by the Special Master of the State's proposed settlement in *Texas v. New Mexico*.
 - b. Stream System Issue 107 (status of pre-Rio Grande Project surface water rights). This stream system issue is currently stayed along with Stream System Issue 104, for the same reason. Four individuals filed separate Form B notices of intent to participate, five years after the deadline for doing so had passed. On January 19, 2022, the Court issued individual orders granting the State's motion to strike each Form B.
 - c. The Court of Appeals affirmed the court's dismissal of the Pre-1906 Claimants' claims to rights derivative of the Rio Grande Dam & Irrigation Company in the Pre-1906 Claimants' expedited *inter se* on those claims. The Pre-1906 Claimants filed a motion for rehearing with the Court of Appeals. The Court denied the motion.

- d. Toby Romero subfile. The Supreme Court affirmed the court's acceptance of the special master's finding of partial forfeiture.
- e. Copper Flat Mine expedited *inter se*. On September 17, 2021, the Court of Appeals entered an opinion on the appeal and cross-appeals. The adjudication court's holding that the mine owners could not continue to develop their water rights under the Mendenhall doctrine was affirmed, as was the holding that the water rights in the primary wells were not abandoned. The holding that the majority of the miscellaneous wells were abandoned or forfeited was reversed and remanded for further findings. On June 16, 2022, argument was held on whether or to what extent the water rights in those wells were abandoned or forfeited.
- f. Apodaca Cervantes LLC subfile. Trial was held on April 26 and 27, 2023, on disputed issues of acreage and higher FDR. Trial briefs and findings of fact and conclusions of law will be due July 10, 2023..
- g. Alex R Masson, Inc. subfile. Mediation was unsuccessful. Case referred to trial. However, parties are working to explore settlement options.
- h. Texas v. New Mexico. Though this is not subfile litigation, LRG Adjudication Bureau legal, support, and technical staff have been and will continue to be involved in support for discovery, trial preparation, and settlement negotiations.

2. Negotiation with major parties.

None now pending other than the negotiations related to the Stream System Issue 104 stay. A decision by the Special Master in Texas v. New Mexico may lead to opening further discussions in the coming year.

3. Mediation of other substantive issues.

- a. Edward Padilla and Dolores Padilla subfile. Mediation was held and the parties settled.
- b. Eugene Frank Pakozdi Jr. subfile. Scheduled for mediation.
- c. Robert E and Billye L Green Revocable Trust subfile. Scheduled for mediation.
- d. Jeremy A Lyon and Carrie N Lyon subfile. Scheduled for mediation.
- e. BJTR Investments LP subfile. Mediation on hold pending claimant's request for documents from federal government.

4. Other special procedures and procedural motions in the LRG

- a. Continuing authentication of claims to historical groundwater use for claimants seeking to add groundwater component to their adjudicated and unadjudicated surface water rights, in conjunction with permitting applications to the District IV office.
- b. Stream System Issue 108 (Global Proceeding to Add Assessed Acreage). The first two groups of subfiles have been adjudicated. The State has filed the proposed global order for the third group with the filed final list for the group, and is awaiting the court's global order for that group. The State finished publication of the fourth group of proposed subfiles and is awaiting conclusion of the time period for filing an objection.

- c. The Court granted the State's motion to clarify implied consent under the Court's Seventh Amended Procedural Order. The State has updated its forms to reflect the court's order.
- d. The State has filed an unopposed motion to withdraw its motion to exclude smaller surface water stock water impoundments from the adjudication.

B. Accomplishments over the past few years

- a. Most of the non-routine work done in the LRG adjudication bureau over the past few years has involved appeals from stream system issues, expedited *inter se* proceedings, and subfile proceedings, including
 - i. James Scott Boyd's appeal of the court's order striking his Form B notice of intent to participate in Stream System Issue Number 107
 - ii. Designated Pre-1906 claimants' appeal of the court's order dismissing claims to derivative rights of the Rio Grande Dam & Irrigation Company
 - iii. Appeal of the Copper Flat expedited *inter se*
 - iv. Claimants' appeal in the Stephen Faykus and the Faykus Family Trust subfile, including appellant's request for a supersedeas bond
 - v. Claimant's appeal from the Toby Romero subfile.
- b. The LRG bureau provided support for the Texas v. New Mexico lawsuit.
- c. The State has begun implementation of Stream System Issue Number 108.
- d. The adjudication of the Nutt-Hockett Basin was completed in 2021.
- e. Settlement of the Rice Family Living Trust and Glenn and Glenda Packard subfiles, which had been scheduled for trial.
- f. Mediation and trial of the Apodaca Cervantes LLC subfile.
- g. Transition to a new server and new GIS software which reduces the risk of loss of data and improves our work in the adjudication.

C. Lower Rio Grande Adjudication, Routine Subfile Processing

- a. The preparatory work for the creation of new subfile offers continues to be focused in the Northern Mesilla section, though work actively continues in all sections but Nutt-Hockett.

Exhibit A

- b. The continuing receipt of Hydrographic Survey Change Requests (HSCR) for all sub-basins prevents the hydrographic survey staff from working in one sub-basin exclusively. Of the three active sub-basins outside of Northern Mesilla, Southern Mesilla receives the most attention, because there the need to analyze a subfile following the receipt of a HSCR will typically require that the close-fitting block of subfiles adjacent to the newly-analyzed one must also be analyzed and, when appropriate, forwarded for new offers.
- c. The status of all sections as of May 8, 2023 is:
 - 1. Nutt Hockett: 43 subfiles, 100% served, 100% adjudicated
 - 2. Rincon: 1238 subfiles, 97% served, 86% adjudicated
 - 3. Northern Mesilla: 5923 subfiles, 62% served, 43% adjudicated
 - 4. Southern Mesilla: 5516 subfiles, 63% served, 48% adjudicated
 - 5. Outlying Areas: 1368 subfiles, 83% served, 75% adjudicated
- d. Routine subfile processing encompasses most of the bureau's everyday work, and includes updating the Hydrographic Survey, creating new maps to conform to multiple point and polygon requirements, analyzing claims for a larger Farm Deliver Requirement (**NOIs**), legal review of proposed offers, service of offers, revised offers or duplicates, reviewing objections, discussions with objecting claimants by survey or legal staff, default and implied consent requests, correcting entered orders with typographical errors and re-opening entered orders needing significant correction.
- e. A UNM law school student intern has been helping the LRG legal bureau since the Spring and will continue to do so during the summer when not studying for the bar in July. A NMSU student intern will be helping the LRG hydrographic survey bureau during the summer. And it is anticipated that the LRG Bureau will add one attorney in Santa Fe and a water resources professional in Las Cruces.
- f. The remodel of the Las Cruces office was recently completed. The remodel project began in the fall of 2022.
- g. Our building in Santa Fe is scheduled for demolition at some future date. We are looking for new offices. There will be some disruption when we move into our new offices.
- h. District-specific regulations under the active water resource management program are currently being prepared for publication. In conjunction with such publication the State anticipates publishing a list of administrable water rights pursuant to Section 19.25.13.27 of the New Mexico Administrative Code. This may lead to an increase in the submission

of Hydrographic Survey Change Requests and a corresponding increase in the work load in the Las Cruces office.

ANIMAS UNDERGROUND WATER BASIN ADJUDCIATION PRIORITIES FOR FY 2024

1. The Court of Appeals affirmed the court's decision in J & C Victor Trust denying the Trust's motion to set aside the court's order setting the FDR and CIR for the Animas adjudication.
2. As of May 18, 2023, there are 202 Animas subfiles, of which 88% have been served, and 77% have been adjudicated.

Table 1: Lower Rio Grande Bureau Resources Allocated

PRIORITY ADJUDICATION SECTION	Staff Atty	Contract Atty	Staff Paralegal	Survey Staff	Data/IT Staff	Section Totals
Lower Rio Grande Adjudication						
A. General	.1	-	.2	.5		.8
B. Rincon	.1	-	.1	.1		.3
C. N. Mesilla	.5	-	.90	3.50		4.9
D. S. Mesilla	.40	-	.6	2.60		3.6
E. Outlying	.1	-	.1	.2		.4
Category Totals: LRG	1.2	-	1.9	6.9		10.0
Animas Underground Adjudication						
Animas	.1	.10	-	.40		.6
	.1	.10	-	.40		.6
CATEGORY TOTALS - ALL SECTIONS	1.3	.10	1.9	7.3		10.6